

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
PLANO DIVISION

La'Shadiion Shemwell, §
As Council Member, and §
In his individual capacity as a voter of §
District 1, §
§
Plaintiff, §
§
v. §
§
City of McKinney, Texas, §
§
Defendant. §

Civil Action No. 4:20-cv-00043-SDJ

**DEFENDANT'S MOTION TO DEEM FACTS ADMITTED,
AND BRIEF IN SUPPORT**

NOW COMES, Defendant City of McKinney, Texas, and, pursuant to Rule 36 of the Federal Rules of Civil Procedure (“Rule 36”), files this Motion to Deem Facts Admitted, and Brief in Support, requesting that certain facts be deemed admitted by Plaintiff La'Shadiion Shemwell for his failure to answer same in a timely manner as required by law.

I. PROCEDURAL BACKGROUND/ARGUMENT AND AUTHORITIES

On February 6, 2020, Defendant served on Plaintiff 21 individual requests for admission, which are reflected in Defendant City of McKinney’s First Request for Admissions to Plaintiff La'Shadiion Shemwell (“Requests for Admission”), attached hereto as Exhibit A. Rule 36(a)(3) provides in pertinent part as follows:

(3) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney....

Today, March 13, 2020, is the 36th day after the Requests for Admission were served on Plaintiff. Undersigned counsel for Defendant has received no response to those Requests from Plaintiff, nor has counsel for Plaintiff requested an extension of time within which to respond to the Requests. Although Plaintiff filed a Corrected Motion to Extend Discovery Deadlines & in the Alternative to Continue Final Injunction Hearing, *see* ECF No. 23, that motion was filed on March 11, 2020, after Plaintiff's response deadline, and it failed to mention anything about the Requests for Admission or any other written discovery to which Plaintiff has failed to timely respond.

No order staying discovery has been entered in this forum, and an expedited bench trial has been set at Plaintiff's request for March 30, 2020.

II. CONCLUSION

Because Plaintiff has failed to timely respond to Defendant's Requests for Admission, Plaintiff should be deemed to have admitted each of Defendant's 21 facts as set forth in the attached Exhibit A, and those facts should be considered conclusively established for the remainder of this case in accordance with Federal Rule of Civil Procedure 36(a)(3), including for purposes of any case-dispositive motion.

WHEREFORE, PREMISES CONSIDERED, Defendant City of McKinney, Texas, requests that this Court grant this Motion to Deem Facts Admitted, and for such other relief, general or special, at law or in equity, to which it may show itself to be entitled.

Respectfully submitted,

/s/ Kent S. Hofmeister

Kent S. Hofmeister

State Bar No. 09791700

khofmeister@bhlaw.net

Robert F. Brown

State Bar No. 03164725

rbrown@bhlaw.net

BROWN & HOFMEISTER, L.L.P.

740 East Campbell Road, Suite 800

Richardson, Texas 75081

(214) 747-6100 (Telephone)

(214) 747-6111 (Telecopier)

Attorneys for Defendant

City of McKinney, Texas

CERTIFICATE OF CONFERENCE

I hereby certify that on this 13th day of March, 2020, I conferred with Plaintiff's counsel, Shayan Elahi, via email and the parties were not able to agree to the relief requested in this Motion. It is therefore presented to the Court for determination.

/s/ Kent S. Hofmeister

Kent S. Hofmeister

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2020, I electronically filed the foregoing document with the Clerk of the Court for the Eastern District of Texas, Plano Division, using the CM/ECF system, which will send notification of such filing to all counsel who have registered with the Court.

/s/ Kent S. Hofmeister

Kent S. Hofmeister

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
PLANO DIVISION

**La'Shadi Shemwell,
As Council Member, and
In his individual capacity as a voter of
District 1,**

Plaintiff,

10

City of McKinney, Texas,

Defendant.

Civil Action No. 4:20-cv-00043-SDJ

**DEFENDANT CITY OF MCKINNEY'S FIRST REQUEST FOR ADMISSIONS TO
PLAINTIFF LA'SHADION SHEMWELL**

To: Plaintiff La'Shadion Shemwell, by and through his counsel of record, Shayan Elahi and Ray Hosack, The Elahi Law Firm, 13601 Preston Road, Suite E770, Dallas, Texas 75240.

Pursuant to the terms and provisions of Rule 36 of the Federal Rules of Civil Procedure and the Court's January 23, 2020 Order Governing Proceedings ("Order"), Defendant City of McKinney, Texas ("Defendant" or "City"), by and through its undersigned counsel of record, submits the following first request for admissions to Plaintiff La'Shadiion Shemwell ("Plaintiff" or "Shemwell") and requests that Plaintiff serve a written response to this request within thirty (30) days after the date of service.

1.

DEFINITIONS AND INSTRUCTIONS

As used herein for purposes of Defendant City of McKinney's First Request for Admissions to Plaintiff La'Shadi Shemwell, the following definitions are applicable.

**DEFENDANT CITY OF MCKINNEY'S FIRST REQUEST FOR ADMISSIONS
TO PLAINTIFF LA'SHADION SHEMWELL – Page 1**



1. *Plaintiff, you, or Shemwell*, shall mean or refer to Plaintiff La'Shadi Shemwell, or other person purporting to represent or act on behalf of Plaintiff. This definition does not apply to Plaintiff's legal counsel to the extent such application would seek privileged information or communications between said counsel and Plaintiff.

2. *Defendant, City, or McKinney*, shall mean or refer to Defendant City of McKinney, and any officer, official, employee, agent, or other person purporting to represent or act on behalf of the City of McKinney.

3. *Lawsuit* shall mean or refer to the action styled *La'Shadi Shemwell, as Council Member, and in his Individual Capacity as a Voter of District 1 v. City of McKinney, Texas*, Civil Action No. 4:20-cv-00043-SDJ, pending in the United States District Court for the Eastern District of Texas, Plano Division.

4. *Plaintiff's Petition or Petition* shall mean or refer to the Plaintiff's Original Verified Petition and Application for Temporary Restraining Order and Injunctive Relief, filed by Plaintiff on January 20, 2020, in the Lawsuit, or any petition, complaint, or other pleading that amends or supplements Plaintiff's Petition.

5. *Order* shall or refer to mean the Court's January 23, 2020 Order Governing Proceedings.

6. *City Charter* shall mean or refer to the City Charter of the City of McKinney, Texas, as amended.

7. *Person* shall mean or refer to any individual or business entity, formal or informal.

8. *Communicate* shall mean or refer to as all contact, oral or written, formal or informal, at any time or place under any circumstances whatsoever, whereby any information of any nature was transmitted or received.

9. The terms or phrases *relate(s) to, relating to, in relation to, pertaining to or regarding* shall mean to consist of, refer to, reflect or be in any way logically, factually or legally connected with the matter discussed.

10. Whenever appropriate, the singular form of a word also shall be interpreted to include the plural. *And* as well as *or* shall be construed either disjunctively or conjunctively as necessary to bring within the scope of any request any information that might otherwise be construed to be outside its scope. *His* shall be interpreted to include *her* and *its*, and is not intended to be exclusive or gender specific.

II.

REQUEST FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that the deadline set by the Order for Plaintiff and Defendant to exchange Initial Disclosures was Friday, January 31, 2020.

RESPONSE:

REQUEST FOR ADMISSION NO. 2: Admit that Defendant timely served Plaintiff with Defendant's Initial Disclosures on January 31, 2020.

RESPONSE:

REQUEST FOR ADMISSION NO. 3: Admit that Plaintiff requested, and Defendant agreed, that Plaintiff be allowed until 5:00 p.m. on February 3, 2020, by which to provide Defendant with Plaintiff's Initial Disclosures.

RESPONSE:

REQUEST FOR ADMISSION NO. 4: Admit that Plaintiff did not serve Defendant with Plaintiff's Initial Disclosures on or before February 3, 2020.

RESPONSE:

REQUEST FOR ADMISSION NO. 5: Admit that as of the date Defendant City of McKinney's First Request for Admissions to Plaintiff La'Shadi Shemwell were served upon you (February 6, 2020), Plaintiff had not served Defendant with Plaintiff's Initial Disclosures.

RESPONSE:

REQUEST FOR ADMISSION NO. 6: Admit that as of February 5, 2020, Plaintiff had not provided Defendant with any documentary evidence in support of any allegation contained in Plaintiff's Petition.

RESPONSE:

REQUEST FOR ADMISSION NO. 7: Admit that as of the date Defendant City of McKinney's First Request for Admissions to Plaintiff La'Shadi Shemwell were served upon you (February 6, 2020), Plaintiff has not provided Defendant with any documentary evidence in support of any allegation contained in Plaintiff's Petition.

RESPONSE:

REQUEST FOR ADMISSION NO. 8: Admit that the deadline set in the Order by which Plaintiff could amend Plaintiff's Petition was February 5, 2020.

RESPONSE:

REQUEST FOR ADMISSION NO. 9: Admit that Plaintiff did not amend Plaintiff's Petition on or before February 5, 2020.

RESPONSE:

REQUEST FOR ADMISSION NO. 10: Admit that Plaintiff's Petition complains of actions taken by the City only on or before January 20, 2020, the date the Petition was filed.

RESPONSE:

REQUEST FOR ADMISSION NO. 11: Admit that as of the date Defendant City of McKinney's First Request for Admissions to Plaintiff La'Shadion Shemwell were served upon you (February 6, 2020), Plaintiff has not identified any witness who might testify concerning any allegation contained in Plaintiff's Petition.

RESPONSE:

REQUEST FOR ADMISSION NO. 12: Admit that as of the date Defendant City of McKinney's First Request for Admissions Plaintiff to La'Shadion Shemwell were served upon you (February 6, 2020), Plaintiff has not submitted to Defendant any documentary evidence in support of any allegation contained in Plaintiff's Petition.

RESPONSE:

REQUEST FOR ADMISSION NO. 13: Admit that Plaintiff has no statistical evidence to support any allegation contained in Plaintiff's Petition.

RESPONSE:

REQUEST FOR ADMISSION NO. 14: Admit that Plaintiff's Petition seeks monetary damages against the City.

RESPONSE:

REQUEST FOR ADMISSION NO. 15: Admit that Plaintiff has an adequate remedy at law for any alleged injury he suffered as contained in Plaintiff's Petition.

RESPONSE:

REQUEST FOR ADMISSION NO. 16: Admit that Plaintiff does not seek an award of attorneys' fees in this Lawsuit.

RESPONSE:

REQUEST FOR ADMISSION NO. 17: Admit that your current pleading is Plaintiff's Original Verified Petition and Application for Temporary Restraining Order and Injunctive Relief, filed on January 20, 2020, and that this pleading contains the entirety of your complaints and allegations against the City in this matter.

RESPONSE:

REQUEST FOR ADMISSION NO. 18: Admit that the City Charter amendments of which Plaintiff complains were submitted as proposed amendments to the voters of the City of McKinney, Texas, and that those same voters approved those proposed amendments.

RESPONSE:

REQUEST FOR ADMISSION NO. 19: Admit that Plaintiff has no evidence to prove what motivation or motivations the majority of City of McKinney voters had when they approved the City Charter amendments in 2019.

RESPONSE:

REQUEST FOR ADMISSION NO. 20: Admit that Plaintiff has no evidence to prove that the City has acted in any way to violate, and therefore has violated, Plaintiff's constitutional rights under the Voting Rights Act of 1965.

RESPONSE:

REQUEST FOR ADMISSION NO. 21: Admit that Plaintiff has no evidence to prove that the City has taken any action to deprive, and therefore has deprived, him or any group of individuals in the City of any constitutional right by diluting the minority vote in the City.

RESPONSE:

Respectfully submitted,

/s/ Robert F. Brown

Kent S. Hofmeister

State Bar No. 09791700

khofmeister@bhlaw.net

Robert F. Brown

State Bar No. 03164725

rbrown@bhlaw.net

BROWN & HOFMEISTER, L.L.P.

740 East Campbell Road, Suite 800

Richardson, Texas 75081

(214) 747-6100 (Telephone)

(214) 747-6111 (Telecopier)

*Attorneys for Defendant City of McKinney,
Texas*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this document was served via electronic mail and certified mail, return receipt requested, upon Shayan Elahi and Ray Hosack of The Elahi Law Firm, attorneys for Plaintiff La'Shadi Shemwell, 13601 Preston Road, Suite E770, Dallas, Texas 75240, on this 6th day of February, 2020.

/s/ Robert F. Brown

Robert F. Brown